LIM HUI KOK & 85 ORS.

v.

ANTARA REALTY SDN. BHD. & ANOR.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS JC
[CIVIL SUIT NO. 25-38-1986]
3 JULY 1994

PRACTICE & PROCEDURE: Order 15 r. 12 RHC - Application for proceedings to be continued by representative action - Whether prerequisites satisfied.

This was an application by 86 plaintiffs to continue proceedings by way of representative action pursuant to O. 15 r. 12 of the Rules of the High Court 1980 (RHC).

The plaintiffs claimed to have entered into sale and purchase agreements with the defendants who were housing developers. Monies were collected from the plaintiffs but the defendants failed to complete the construction of the houses in breach of the said agreements and also failed to deliver a copy of the sale and purchase agreement to each of the plaintiffs in breach of their statutory duty. The plaintiffs contended that the individual titles had been issued by the Land Administrator but the defendants had failed to execute registrable transfers in their favour. Consequently the plaintiffs filed suit and obtained a judgment in default of appearance against the defendants afterwhich the defendants filed their defence denying the allegations.

In the present application three of the plaintiffs agreed to represent the other plaintiffs in a bid to save time and costs. Plaintiffs' Counsel submitted that the plaintiffs had satisfied all three conditions necessary for the purpose of a representative action i.e. (i) that all the plaintiffs had a common interest in the action; (ii) that all the plaintiffs belonged to the same class; and (iii) that the relief sought would benefit all the plaintiffs.

Held:

[1] Order 15 r. 12 RHC is designed to avoid multiplicity of proceedings where numerous persons have the same interest. A judgment or order made in a representative action binds all persons whom the parties to the action represent. In the case before the Court, based on the statement of claim and the relief sought, the Court was satisfied that the proposed three representatives and the rest of the plaintiffs were members of a class who had a common interest, a common grievance and that the relief sought would be beneficial to all the plaintiffs.

[Application granted].

Cases referred to:

Voon Keng & Ors. v. Syarikat Muzwina Development Sdn. Bhd. [1990] 1 CLJ 1010/[1990] 3 MLJ 61 ***(foll)***

Jok Jau Evong & Ors. v. Marabong Lumber Sdn. Bhd. & Ors. [1990] 2 CLJ 625/[1990] 3 MLJ 427 ***(foll)***

Duke of Bedford v. Ellis [1901] AC 1 ***(foll)***

Eh Riyid v. Eh Tek [1976] 1 MLJ 262 ***(foll)***

Palmco Holding Bhd. v. Sakapp Commodities (M) Sdn. Bhd. & Ors. [1988] 2 MLJ 624 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 12
Housing Developers (Control and Licensing) Act 1966

For the plaintiffs - George John; M/s. George John & Co.
For the defendants - C.S. Khoo; M/s. Lovelace and Hastings

JUDGMENT

Mohd Hishamudin bin Mohd Yunus JC:
This is an application by the plaintiffs for an order that this proceeding be continued by way of representative action pursuant to O. 15 r. 12 of the Rules of the High Court. Originally, the 86 plaintiffs filed the writ on 30 January 1986 and the statement of claim was filed on 2 December 1986. The plaintiffs, in their statement of claim, claimed that they are the purchasers of houses in a housing scheme; that the defendants were housing developers licensed under the Housing Developers (Control and Licensing) Act 1966, and were the developers of the housing scheme in question; that the plaintiffs had severally entered into sale and purchase agreements with the defendants in respect of the houses purchased and that the defendants had collected money from the plaintiffs. It is alleged that the defendants had breached the sale and purchase agreements by failing to complete the construction of the houses that the plaintiffs had bought. It is averred that the land on which the housing scheme is situated has now been subdivided and individual titles have been issued to the defendants (or their agents) by the Land Administrator, Kangar, Perlis; and that, in breach of the sale and purchase agreements, the defendants had failed to execute registrable transfers in favour of the plaintiffs. It is also alleged that the defendants had committed a breach of statutory duty by failing to give each of the plaintiffs a copy of the sale and purchase agreement.

The plaintiffs therefore claim, *inter alia*, the following:

(a) An order requiring the first and second defendants, their servants or agents to forthwith render to the plaintiffs or their solicitors a stamped copy of the sale and purchase agreement executed between the plaintiffs as purchasers and the first and second defendants as housing developers.
(b) An order requiring the first and second defendants, their servants or agents to forthwith execute valid and registrable transfers of the said land and sub-divided portions thereof in favour of the plaintiffs with vacant possession and free from all encumberances.
(c) An injunction to forthwith restrain the first and second defendants, their servants or agents, from transferring, charging, leasing or, in any manner whatsoever, dealing with the said piece of land and subdivided portions thereof until final disposal of this suit.

The second defendant did not enter appearance and judgment in default of appearance had been obtained by the plaintiff against it in April 1987

The first defendant filed its statement of defence in June 1987. In its statement of defence, it denies all the allegations of the plaintiffs but admits that it was a licensed developer. It states that it is the registered and beneficial owner of the land in question, and admits that the land has been subdivided and that individual titles for the respective lots have been issued to it.

In the supporting affidavits to this application it is stated that three of the plaintiffs, namely:

(1) Lee Kim Huah (plaintiff no. 35);
(2) Lau Ah Bah (plaintiff no. 59); and
(3) Chong Chow Hoe (plaintiff no. 82),

have agreed to represent all the plaintiffs in the representative action in the belief that such a course of action would be convenient to both parties as well as would save time and costs.

Encik George John, learned Counsel for the plaintiffs, submitted that this Court ought to grant this application since the plaintiffs have satisfied all the three conditions necessary for the purpose of representative action, namely:

(a) that all the plaintiffs have a common interest in the action;
(b) that all the plaintiffs belong to the same class; and
(c) that the relief sought would benefit all the plaintiffs.

He referred this Court to *Voon Keng & Ors. v. Syarikat Muzwina Development Sdn. Bhd.* [1990] 3 MLJ p. 61 and *Jok Jau Evong & Ors. v. Marabong Lumber Sdn. Bhd. & Ors.* [1990] 3 MLJ page 427.

Now, Order 15 r. 12 provides:

> Representative proceedings.
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> [Ord. 15] 12 (1). Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders continued by or against any one or more of them as representing all or as representing all except one or more of them.

This rule is designed to avoid multiplicity of proceedings where numerous persons have the same interest. A judgment or order made in a representative action binds all persons whom the parties to the action represent. In *Duke of Bedford v. Ellis* [1901] AC 1 at page 8, Lord MacNaughten stated that a representative action can only be brought where there is a common interest, a common grievance, and relief sought which is in its nature beneficial to all those whom the plaintiff proposes to represent. This principle was cited with approval by our Federal Court in *Eh Riyid v. Eh Tek* [1976] 1 MLJ 262 where Raja Azlan Shah FJ (as he then was) said (at page 26):

> In a representative action the plaintiff is self elected representative of himself and others. He does not have to obtain the consent of the other persons whom he purports to represent, and they are not liable for costs though by estoppel and *res judicata* they will be bound by the result of the case - see *Markt & Co. Limited v. Knight Steamship Company Limited* [1910] AC 2 KB 1021. The requisite of a representative action is that the persons who are to be represented must have the same or common interests as the plaintiff in one and the same cause or matter, although it may result in the case of each of them in different measure of relief - (see *Markt & Co. Limited v. Knight Steamship Company Limited*) or relief common to all of them - (see *Beeching v. Lloyd* [3 Drew 227]). O. 16 r. 9 is to be interpreted as declaratory of the old Court of Chancery practice with regard to representative action. The most authoritative statement on O. 16 r. 9 is that stated by Lord MacNaughten in the case of *The Duke of Bedford v. Ellis and Ors*:
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> > Under the old practice the Court required the presence of all parties interested in the matter or suit, in order that a final end might be made of the controversy. But

a when the parties were so numerous that you never could 'come at justice', to use an expression in one of the older cases, if everybody interested was made a party, the rule was not allowed to stand in the way. It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent.

b The principle was discussed by Zakaria Yatim J. in *Palmco Holding Bhd. v. Sakapp Commodities (M) Sdn. Bhd. & Ors.* [1988] 2 MLJ 624, at p. 627:

> The question that arises here is what are the requirements to be satisfied by the plaintiff in order to succeed in a representative action? In *Duke of Bedford v. Ellis,* Lord MacNaughten said. "given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff
> c proposed to represent" In *Smith & Ors. v. Cardiff Corporation* [1954] 1 QB 210, the Court of Appeal held that to bring a representative action it must be shown: first, that all the members of the class had a common interest; secondly, that they all had a common grievance; and thirdly, that the relief was in its nature beneficial to them all.
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> It is clear from *Duke of Bedford's* case that the plaintiff has to satisfy three requirements in order to succeed in a representative action. Firstly, the plaintiff and those represented
> d by it are members of a class and that these members have a common interest. Secondly, the plaintiff and those it represents have a common grievance. Thirdly, the relief sought is in its nature beneficial to them all.

In *Voon Keng,* the suit was, like the present case, by the purchasers of houses against the developers who built the houses. There, the plaintiffs had filed a claim for RM498,733.20 against the defendants the details and particulars of which were in the
e statement of claim. Unlike the present case, where it is alleged by the plaintiffs that the construction of the houses were not completed by the defendants, the claims of the plaintiffs in that case were for agreed statutory damages for late delivery of vacant possession and refunds of interest paid due to premature release of moneys at the request of the defendants' architect. The first plaintiff, proceeding under O. 15 r. 12(1), had filed the claim on behalf of all the plaintiffs and it was held by Abdul Malik J that
f the plaintiffs were members of the same class, had a common grievance and that the relief sought was beneficial to all the plaintiffs and therefore they were entitled to proceed by way of a representative action.

In the case before me, based on what is stated in the statement of claim and the relief sought, I am satisfied that the proposed three representatives and the rest of the
g plaintiffs are members of a class who have a common interest; that they have a common grievance and that the relief sought would be beneficial to all the plaintiffs.

Accordingly, I granted the application.

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